Catholic University Law Review

Volume 47
Issue 2 *Winter 1998*

Article 5

1998

The Fundamental Agreement between the Holy See and Israel and the Conventions Between States and the Church Since the Vatican II Council

Silvio Ferrari

THE FUNDAMENTAL AGREEMENT BETWEEN THE HOLY SEE AND ISRAEL AND THE CONVENTIONS BETWEEN STATES AND THE CHURCH SINCE THE VATICAN II COUNCIL

*Silvio Ferrari**

I. INTRODUCTION

Since the conclusion of the Vatican II Council, the Holy See has signed more than sixty conventions of various titles with twenty-seven different countries.[1] Most of these have been with European and Latin American countries where Catholicism, or at least Christianity, has had, and continues to have, considerable influence. One convention was signed with the Muslim state of Morocco, another with Israel, and one with a very specific scope with the Ivory Coast.

Many of these conventions regard particular, though sometimes very important questions such as the appointment of bishops, the definition of diocese boundaries, and religious assistance to the armed forces. About ten conventions[2] contain a general, or at least broad, regulatory discipline

* Professor, Ecclesiastical Law, University of Milan.

1. *Cf.* 3 CARLOS CORRAL SALVADOR & SANTIAGO PETSCHEN, CONCORDATOS VIGENTES: TEXTOS ORIGINALES, TRADUCCIONES E INTRODUCCIONES (1981-1995) (1996).

2. I refer to the following conventions: Accord Between the Holy See and Croatia on Legal Questions (1996) (on file with author); Fundamental Agreement Between the Holy See and the State of Israel, Dec. 30, 1993, Vatican-Isr., 33 I.L.M. 153 (1994) [hereinafter Fundamental Agreement]; Accord Between the Holy See and the Republic of San Marino, Apr. 2, 1992, 85 ACTA APOSTOLICAE SEDIS 324 (1993); Convention Between the Holy See and the Republic of Malta Concerning Catholic Schools, Nov. 28, 1991, 85 ACTA APOSTOLICAE SEDIS 569 (1993); Convention Between the Holy See and the Republic of Malta Concerning Immovable Church Property, Nov. 28, 1991, 85 ACTA APOSTOLICAE SEDIS 588 (1993); Agreement to Amend the 1929 Lateran Concordat, Feb. 18, 1984, Holy See-Italy, 24 I.L.M. 1589 (1985); Letter from Pope John Paul II to King Hassan II of Morocco, Feb. 5, 1984, 76 ACTA APOSTOLICAE SEDIS 712 (1984); Letter from King Hassan II of Morocco to Pope John Paul II, Dec. 30, 1983, 76 ACTA APOSTOLICAE SEDIS 712 (1984); Accord Between the Holy See and the Republic of Peru, July 19, 1980, 72 ACTA APOSTOLICAE SEDIS 807 (1980); Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Entre el Estado Español y la Santa Sede, Sobre Asistencia Religiosa a las Fuerzas Armadas y servicio Militar de Clérigos y Religiosos de 3 de enero de 1979 (B.O.E. 1979, 300) [Accord Between Spain and the Holy See concerning Religious Assistance to the Armed Forces and the Military Assistance of Clergy and Religious Persons]; Instru-

concerning church-state relations. Because the Fundamental Agreement between the Holy See and Israel falls under this latter group, this Article will focus on these broader conventions.

II. FREEDOM OF THE CHURCH AND COOPERATION WITH THE STATE IN CONVENTIONS SINCE THE VATICAN II COUNCIL

The Vatican II Council documents define the relationship between the Church and states in terms of reciprocal independence and autonomy on the one hand and cooperation on the other.[3] Since the Vatican II Council, however, these concepts have been translated into different forms in the conventions.

A. European Conventions

The affirmation of the reciprocal independence of the Church and states and the consequent necessity of their mutual cooperation is a clearly identifiable theme in these conventions. This trend began with the Spanish Agreement of 1976 and continued with subsequent refinement, through conventions with Italy, Poland, and Croatia.

---

mento de Ratificación de 4 de diciembre de 1979, Acuerdo Sobre Asuntos Económicos, de 3 de enero de 1979 (B.O.E. 1979, 300) [Accord Between Spain and the Holy See Concerning Economic Matters]; Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Entre el Estado Español y la Santa Sede, Sobre Asuntos Jurídicos, de 3 de enero de 1979 (B.O.E. 1979, 300) [Accord Between Spain and the Holy See Concerning Juridical Matters]; Instrumento de Ratificación de 4 de diciembre de 1979, Acuerdo Entre el Estado Español y la Santa Sede, Sobre Enseñanza y Asuntos Culturales, de 3 de enero de 1979 (B.O.E. 1979, 300) [Accord Between Spain and the Holy See Concerning Education and Cultural Matters]; Instrumento de Ratificación de España al Acuerdo Entre la Santa Sede y el Estado Español de 28 de julio de 1976 (B.O.E. 1976, 230) [Accord Between Spain and the Holy See]; Concordat Between the Holy See and the Republic of Colombia, July 12, 1973, 67 ACTA APOSTOLICAE SEDIS 421 (1975); Accord Between the Holy See and Argentina, Jan. 28 1966, 59 ACTA APOSTOLICAE SEDIS 127 (1967). Additionally, I refer to conventions with Tunisia (1964) and with Poland (1993), although the Tunisian Convention was stipulated a year before the conclusion of Vatican II, and the Polish Convention has not yet been ratified by the Polish parliament. *See* Convention Between the Holy See and Poland (1993) (unratified convention on file with author); Convention Between the Holy See and the Republic of Tunisia, June 27, 1964, 56 ACTA APOSTOLICAE SEDIS 917 (1964).

3. *See* VATICAN II COUNCIL, GAUDIUM ET SPES (Dec. 7, 1965), *reprinted in* VATICAN COUNCIL II: THE CONCILIAR AND POST CONCILIAR DOCUMENTS para. 76, at 984-85 (Austin Flannery ed. & Ambrose McNicholl trans., 1975).

> The political community and the Church are autonomous and independent of each other in their own fields. Nevertheless, both are devoted to the personal vocation of man, though under different titles. This service will redound the more effectively to the welfare of all insofar as both institutions practice better cooperation according to the local and prevailing situation.

Id. para. 76, at 984.

The July 28, 1976 agreement between the Holy See and Spain declares that:

> The Holy See and the Spanish Government . . . considering that the Vatican II Council, in its turn, has established as fundamental principles, to which the relations between the political community and the Church must conform, both the mutual independence of both Parties, in their order, and a healthy cooperation between them . . . deem it necessary to regulate with distinct Agreements the subjects of common interest that, in the new circumstances which have emerged since the signing of the Concordat of August 27, 1953 require a new set of regulations.[4]

The above statement is contained in the preamble of the agreement and regards only the *independence* of the State and the Church. Moreover, it refers to the principles of the Vatican II Council as the foundation of this independence. These principles are certainly important to the Church, but they may not be held in equal regard by the State.

The agreement between the Holy See and Italy of February 18, 1984, introduced important new elements. It declares that:

> The Italian Republic and the Holy See reaffirm that the State and the Catholic Church are, each in its own order, independent and sovereign and commit themselves to the full respect of this principle in their mutual relations and to reciprocal collaboration for the promotion of man and the common good of the Country.[5]

This provision, no longer contained in the preamble of the agreement, but Article 1, refers to the foundation of the principle of reciprocal independence and sovereignty as being not only the declaration of the Vatican II Council, but also Italian constitutional laws. The provision thus provides the argument with a broader and more solid foundation.

The concordat with Poland in 1993 and the agreements with Croatia in 1996 continued this trend with just one variation. The term "sovereign," which in the Italian case is justified by the mention of the sovereignty of the Church contained in Article VII of the Constitution,[6] is replaced by the word "autonomous," thus reinstating the language used in the Con-

---

4. Instrumento de Ratificación de España al Acuerdo Entre la Santa Sede y el Estado Español de 28 de julio de 1976 (B.O.E. 1976, 230).

5. Agreement to Amend the 1929 Lateran Concordat, Feb. 18, 1984, Holy See-Italy, art. 1, 24 I.L.M. 1589, 1591 (1985).

6. The Italian Constitution mentions the sovereignty of the Church in Article VII. *See* COSTITUZIONE [COST.] art. VII ("The State and the Catholic Church are, each within its own ambit, independent and sovereign.").

stitution *Gaudium et Spes*.[7] Apart from this change, the Italian model has been followed virtually to the letter.[8]

This brief examination illustrates that the aforesaid principles of the Vatican II Council, which were adopted to regulate relations between the Church and the State, have been transposed practically in full into these conventions. Consequently, this has led to a radical departure from the formulae used prior to the Vatican II Council. The Spanish Concordat of 1953 offers a final example by affirming that "the Spanish State recognizes the Catholic Church's character of a perfect society and guarantees it the free and full exercise of its spiritual powers and of its jurisdiction, as well as the free and public exercise of worship."[9]

Some experts have pointed out, correctly, in my opinion, that the progression from the pre-Vatican II Council formulae to those in use in the last thirty years does not imply any alteration in the central nucleus of ecclesiastical doctrine on relationships with states. In both cases, before and after the Council, the intention was to claim the original and autonomous character of the legal system of the Church:[10] to declare that the Church is a perfect legal society is no different from declaring that it is an original and autonomous society analogous to those that legal science defines as primary legal systems.

The progression from a formulae centered on the "perfect society" category to one which hinges on concepts of independence and autonomy has not been unimportant. Under a historical and political profile, this progression has marked the break with the concordats stipulated, between the two world wars, with the totalitarian German or authoritarian Italian, Spanish, and Portuguese regimes. It has smoothed the way for the liberal democracies that have emerged in Europe during the last fifty years to conclude new conventions with the Catholic Church. The very substitution, in Spain and Italy, of the term "concordat" with "agreement" also has been adopted to mark this break with the past. In the field of law, this same progression has made it possible to re-open dialogue with "secular" legal science that the insistence on nineteenth century notions risked rendering impossible.

---

7. VATICAN II COUNCIL, *supra* note 3, para. 76, at 984.

8. See the formal changes in the Accord Between the Holy See and Croatia on Legal Questions, art. 1 (1996) (on file with author), and the Concordat Between the Holy See and the Republic of Poland, art. I (1993) (unratified convention on file with author).

9. Concordat Between the Holy See and Spain, Aug. 27, 1953, art. II, para. 1, 45 ACTA APOSTOLICAE SEDIS 625, 626 (1953).

10. *See* Giorgio Feliciani, *Droit Canonique des Relations de l'Eglise Catholique avec les Etats Depuis 1917*, LE SUPPLÉMENT, Dec. 1996, at 100-02.

Indeed, the principles of independence and autonomy of the Church, and cooperation with the State have been acknowledged without problems in the law of the European States because these same principles—albeit with different breadth and significance—had already found autonomous citizenship.[11] Various factors were responsible for this development. One is the process of secularization which has influenced the legal systems of these states and indirectly favored the recognition of the independence of the Catholic Church and of other religious communities. Additionally, the development of the rights of freedom, extended to guarantee the Church's collective manifestations and beliefs, has allowed the guarantees of religious freedom to the individual to be extended to institutions, thus providing an important support to the principle of the autonomy of religious confessions. Furthermore, recourse throughout Europe to a concerted policy between the state and the most important social organizations, such as trades unions, parties, and pressure groups, also has created a favorable climate for cooperation between the state and religious confessions.

The agreements and pacts of various types between certain states, including Germany, Italy, Spain, Poland, and in the future probably Portugal,[12] and certain religious organizations—not only the Catholic Church—are the most evident manifestations of this evolution in European law. The aims of these agreements are to recognize the autonomy and independence that, by nature, distinguish the religious groups and then to translate them into state laws in different ways, depending on the particular characteristics of each religious community.

In particular, as far as the Catholic Church is concerned, the evolution of the European legal culture has made it possible to transpose the principles expressed in the Vatican II Council documents on the subject of relations between the Church and states into state law through conventions. In this way, the particular intensity and specificity that characterize the Catholic Church's independence and autonomy have been acknowledged by a state's legal system, without encountering the difficulties that would probably have emerged had the notion of "perfect society" been maintained.

---

11. *See supra* note 6 (quoting article VII of the Italian Constitution); *see also* GRUNDGESETZ [constitution] [GC] art. 137 (F.R.G.) ("Each religious body regulates and administers its affairs independently within the limits of general laws."); CONSTITUCION [C.E.] ch. II, § 1, art. 16, para. 3 (Spain) (obligating the public powers to maintain the appropriate "relations of cooperation with the Catholic Church and other denominations").

12. In Portugal, a government committee presently is examining this solution. *See L'Anteprojecto della Lei da Liberdade Religiosa* concluded on March 5, 1997.

B. The Latin American Conventions

This last conclusion is only partly valid for the Latin American conventions. The agreements and conventions concluded after the Vatican II Council with Argentina, Colombia, and Peru are in fact significantly different from the European model, and in some cases maintain formulae that recall the concordats stipulated in Europe between the two world wars.[13]

The Argentinean Agreement of 1966, for example, does not contain any explicit reference to the principles of independence, autonomy, and cooperation. However, similar to the Italian Concordat of 1929, it opens with the statement that "[t]he Argentinean State recognizes and guarantees the Roman Catholic Apostolic Church the free and full exercise of its spiritual power, the free and public exercise of its worship, and likewise of its jurisdiction in the field of its competence, in order to achieve its specific ends."[14] Although the preamble references the principles of the Vatican II Council, the wording still is indebted strongly to classical ecclesiastical public law and implicitly to the doctrine of the Church as a "perfect society."[15]

With respect to this point of departure, the 1973 concordat with Colombia marks a step forward. After mentioning in the preamble the purpose of assuring a fruitful cooperation[16] between State and Church, the agreement declares, in Article II, that "[t]he Catholic Church shall keep its full freedom and independence from the civil power and consequently may exercise freely and wholly its spiritual authority and its ecclesiastical jurisdiction, governing itself and administrating itself according to its own laws."[17] Moreover, Article III confirms that "canon law is independent from civil law and is not a part of it, but it shall be respected by the Authorities of the Republic."[18] The 1980 agreement with Peru follows the fundamental lines of this model. For example, the preamble mentions the cooperation between church and state, Article I recognizes the

13. *See* Antonio Ingoglia, *L'Istituto Concordatario Nei Paesi Ispano Americani*, *in* 1 LO STUDIO DEL DIRITTO ECCLESIASTICO: ATTUALITÀ E PROSPETTIVE 201-06 (Valerio Tozzi ed., 1997) (discussing these Latin American conventions).

14. Accord Between the Holy See and Argentina, Jan. 28 1966, art. I, 59 ACTA APOSTOLICAE SEDIS 127, 127-28 (1967).

15. *See* RONALD MINNERATH, L'EGLISE ET LES ETATS CONCORDATAIRES (1846-1981), at 93 (1983). Regarding this agreement, also compare the contributions published in 3 ANUARIO ARGENTINO DE DERECHO CANONICO 347 (1996).

16. Concordat Between the Holy See and the Republic of Colombia, July 12, 1973, preamble, 67 ACTA APOSTOLICAE SEDIS 421, 421-22 (1975).

17. *Id.* art. II, at 422.

18. *Id.* art. III, at 422.

full independence and autonomy of the Church, and Article II recognizes the Church's legal personality of public character.[19]

Despite the significant innovations contained in these two texts, the Latin American conventions diverge from the European models on one important point: they do not contain any reference to the distinct order of the Church and of the state. In the absence of this specification, the very acknowledgement of the independence and autonomy of the Church could be viewed as a state concession and may lead to the idea of a sort of self-imposed limitation by the state on its sovereignty. Though this is more evident in the wording used in Article I of the Argentinean agreement, it is also valid for the other two conventions. Indeed, in all of these conventions, recognition of the independence and autonomy of the Church is disconnected from any premise serving to make such recognition explicit and serving to provide a justification for it; therefore, it is attributable to an act of free self-determination by the state. Instead, in the European conventions, such recognition is expressed in terms that make it contingent upon the acknowledgement—as much by the Church as by the state—of the existence of two distinct orders, spiritual and temporal. Both church and state admit their own incompetence in the order belonging to the other, with the exception of what regards the development of the human person and the promotion of the common good which are explicitly identified as areas of reciprocal cooperation.

This difference probably is attributable to a different degree of evolution within the respective political and legal systems. The democratic tradition of many Latin American countries has been more fragile. Recall that the Argentinean and Peruvian concordats were concluded with military governments, and, likewise, the Colombian concordat was concluded while the country was under a state of siege. This has stifled the development of a legal culture able to set the independence and autonomy of the Church in a context of independence and autonomy extended to a plurality of social organizations. Additionally, it stifled the interpretation of the notion of "*liberates Ecclesiae*" as the more intense specification of freedom rights due to organized groups. Proof of this, by the way, is the absence of pacts with minority religious confessions. In this context, the traditional model, linked to the concept of the Church as "*societas perfecta*," does not appear to have been completely overcome. In its turn, the absence of a break of proportions similar to the European model—where very few concordats were concluded from the middle of

19. *See* Accord Between the Holy See and the Republic of Peru, July 19, 1980, preamble, 72 ACTA APOSTOLICAE SEDIS 807, 807 (1980); *id.* art. I, at 807; *id.* art. II, at 807.

the last century until the outbreak of the first world war—has probably contributed to developing the Latin American model in a more markedly consistent and linear fashion.

C. Conventions with Islamic Countries

The convention with Morocco, and also the one with Tunisia, which is referred to below, presents a completely different picture from those discussed so far. It is not difficult to understand why. The convention was stipulated with a country where the distinction between the spiritual and temporal orders is extremely weak. Consequently, it cannot supply a sufficient basis for affirming the independence and autonomy of the Church. This basis must therefore be sought elsewhere and precisely in the principle of tolerance that, as is declared explicitly in the letter from King Hassan of Morocco, "characterizes Islam and has always presided over Our relations between the Moroccan State and the Catholic Church."[20] The legal status of the Catholic Church in Morocco is consistent with this premise. It is, at least formally, a status granted by the King in the exercise of his right of sovereignty,[21] and although de facto, it was defined through negotiations between representatives of the two parties.

The convention with Tunisia, the most "secular" country of the Islamic world and a country where the French cultural influence has been strongest, presents another completely different picture. In a certain sense, it is a more "Western" one. Yet even in this convention, there is no room for notions of independence and autonomy of the Church, nor cooperation with the State. The convention limits itself to declaring that the government of the Tunisian Republic: "protects the free exercise of the Catholic religion in Tunisia,"[22] "accepts that the Catholic Church in Tunisia . . . provides, in the respect of the general laws of the country, for

20. The convention with Morocco was concluded through an exchange of letters. In the first letter, the King of Morocco expressed the fundamental principles of the legal status conceded to the Catholic Church. Letter from King Hassan II of Morocco to Pope John Paul II, Dec. 30, 1983, 76 ACTA APOSTOLICAE SEDIS 712 (1984). In the second, the Pope gave his "agreement that the Church and the Catholics in the Kingdom of Morocco should conform everything to the rules agreed upon." Letter from Pope John Paul II to King Hassan II of Morocco, Feb. 5, 1984, 76 ACTA APOSTOLICAE SEDIS 712 (1984).

21. Both King Hassan's letter and Pope John Paul II's reply refer to "le statut ainsi octroyé à l'Eglise." Letter from Pope John Paul II to King Hassan II of Morocco, Feb. 5, 1984, 76 ACTA APOSTOLICAE SEDIS 712, 713 (1984); Letter from King Hassan II of Morocco to Pope John Paul II, Dec. 30, 1983, 76 ACTA APOSTOLICAE SEDIS 712, 714 (1984).

22. Convention Between the Holy See and the Republic of Tunisia, June 27, 1964, art. 1, 56 ACTA APOSTOLICAE SEDIS 917, 917 (1964).

its internal organization,"[23] and "shall not hinder the exercise of the spiritual authority of the Prelate of Tunis over the Catholic believers in Tunisia."[24] The freedom that the Church enjoys in Tunisia does not flow from any recognition by the Tunisian State of the original and autonomous character of the ecclesiastical legal system.[25]

Considered as a whole, these conventions are not very satisfactory from the Holy See's point of view. For decades, the Catholic Church acted in many Islamic countries through the good offices of the colonial powers, especially France, Italy, and Spain. The era of de-colonization forced the Catholic Church to act in the first person. In the Western world, the Church worked within a context of legal and socio-political categories that it had helped to forge. In the Islamic world, however, that context did not exist, and, thus, the instrument of the concordat has revealed evident limitations.

III. BRIEF SUMMARY

From this schematic examination emerges indications that the Vatican II Council's views on church-state relations have been almost fully acknowledged in the conventions with European countries. In those conventions with Latin American countries, the principles of the independence and autonomy of the Church and cooperation with the state are likewise affirmed, but with different and perhaps less satisfactory wording. The differences in the political and legal situations of Europe and Latin America help us to understand why the same principles have not been translated into an univocal formulae on both continents.

The above examination also shows how these same principles have been unable to find acknowledgement in the two conventions stipulated with countries without a Christian tradition. In these nations, either the traditional Islamic model has prevailed, which is based on the principle of tolerance (Morocco), or there is a more secular model which is, nonetheless, unwilling to accept the independence and autonomy of the Church (Tunisia).

Does this conclusion mean that the notions of independence and autonomy of the Church and of cooperation with the State are not "exportable" to conventions with states with a non-Christian tradition? Is the process of adaptation to the particular local circumstances contained in the European and Latin American conventions impossible with such

23. *Id.* art. 4, at 918.

24. *Id.*

25. *See* MINNERATH, *supra* note 15, at 87.

countries? Or, after examining the Fundamental Agreement between the Holy See and Israel, is a different conclusion possible?

IV. THE FUNDAMENTAL AGREEMENT BETWEEN ISRAEL AND THE HOLY SEE

Before examining the contents of the Agreement, it is useful to remember that the State of Israel was born from the intersection of two different roots. One is more secular, connected to eighteenth century Zionism and its intention to put an end to the persecution of the Jews by guaranteeing them a state in which to live. The other is more religious, based on the idea of the realization of the divine promise to provide a land to the people elect. These two traditions coexist in the State of Israel, though not without problems. Israel cannot be considered a fully secular state, though, it is not a confessional state either, because the religious element is intimately connected to the national element.[26] Indeed, the secular-confessional dialectic, which is of typically Western origin, may be applied to Israel with difficulty, as from a certain standpoint Israel is to be found half-way between the East and the West. From this point of view, Israel is a good test case to determine how far the conceptual categories born in the West, with the determining contribution of Christianity, as in the case of the distinction between spiritual and temporal order, can be applied in countries where this contribution is a minority compared to other cultural traditions—such as the Islamic, or in the case under discussion here, the Jewish tradition—and where such a distinction consequently is less established.[27]

This peculiar characteristic of Israel is reflected in the two articles that are the foundation on which the entire Fundamental Agreement rests, namely Articles 1 and 3.

---

26. *See* Ariel Rosen-Zvi, *Freedom of Religion: The Israeli Experience*, 46 ZEITSCHRIFT FUR AUSLANDISCHES OFFENTLICHES RECHT UND VOLKERRECHT 215 (1986) ("The Jewish religion, throughout the generations, has been identified with the Jewish nation."); *see also* Claude Klein, *Stato, Ebraismo e Confessioni Religiose in Israele*, *in* IL MEDITERRANEO NEL NOVECENTO: RELIGIONI E STATI 110-25 (Andrea Riccardi ed., 1994) (discussing the debated question of the religious qualification of the Israeli state).

27. *Cf.* Rosen-Zvi, *supra* note 26, at 215 ("The Jewish national tradition, as opposed to the tradition of the Christian peoples, desists from giving to Caesar what belongs to him: rather, it demands from its adherents to give to the religion their all.").

V. ARTICLE 1 OF THE FUNDAMENTAL AGREEMENT

Article 1 obligates both parties to uphold "the human right to freedom of religion and conscience."[28] This is a new wording that does not appear with the same breadth of meaning in the other conventions with the Holy See. References to the right to religious freedom are not absent in other conventions, but normally these references serve to reaffirm the principle of the independence and autonomy of the Church, which is usually stated in a more specific form, or they regard the exercise of specific rights for example, the right of parents to educate their children.[29] There is not otherwise a general commitment with respect to religious freedom, which is instead found in Article 1 of the Fundamental Agreement. It is therefore necessary to assess carefully the causes and scope of this innovation.[30]

---

28. Fundamental Agreement, *supra* note 2, art. 1, para. 1, at 154.

29. Freedom of religion is referred to in the preambles of the agreements with Spain (1976), Italy, Croatia, and the Polish Concordat, but these references do not have any further developments in the text of the agreements unless it is to reaffirm the principle of the freedom of the Church which is already included in that of independence and autonomy. *See* Accord Between the Holy See and Croatia on Legal Questions, preamble (1996) (on file with author); Convention Between the Holy See and Poland, preamble (1993) (unratified convention on file with author); Agreement to Amend the 1929 Lateran Concordat, Feb. 18, 1984, Italy-Holy See, preamble, 24 I.L.M. 1589, 1589 (1985); Instrumento de Ratificación de España al Acuerdo, Entre la Santa Sede y el Estado Español de 28 de julio de 1976, preamble (B.O.E. 1976, 230). In this sense, for example, Article 4 of the Agreement with Croatia on legal questions declares: "In the respect of the right to religious freedom, the Republic of Croatia recognises to the Catholic Church, and to its communities of any rite, the free exercise of its apostolic mission, in particular with regard to divine worship, government, teaching and the activity of the associations disciplined in Art. 14." Accord Between the Holy See and Croatia on Legal Questions, art. 4 (1996) (on file with author). In other cases, the same reference to the freedom of religion has the function to point out the scope of specific provisions. For an example of this, see the Agreement with Croatia on cooperation in the fields of education and culture: "The Republic of Croatia, in the light of the principle of religious freedom, respects the fundamental rights of parents to the religious education of their children." *See* Accord Between the Holy See and Croatia on Legal Questions, art. 1 (1996) (on file with author). Article 12 provides:

> On account of the service that the Catholic Church provides to society, and in respect of religious freedom, the Republic of Croatia allows the Church to have suitable access to the State means of social communication, in particular to the radio and to the television .... In respect of the principles of religious freedom in a pluralist society, the Republic of Croatia shall vigil with consistency so that in the means of social communication the feelings of Catholics shall be respected, and likewise the fundamental human rights, of ethical and religious order.

Id. art. 12.

30. *Cf.* Natan Lerner, *The 1992 UN Declaration on Minorities*, 23 ISR. Y.B. ON HUM. RTS. 111, 111-24 (1993) (stressing the utility of the conventions stipulated between states and religious confessions to reinforce the protection of religious freedom, and integrating the provisions, which are not always satisfactory, contained in these conventions into the instruments of international law).

With respect to the causes, the request to insert a clause guaranteeing the freedom of religion and of conscience in the Fundamental Agreement appears to have been put forward by the Holy See during the negotiations.[31] It is possible that the Holy See was concerned with protecting the Israeli-Catholic community, a small minority (principally composed of Arabs) of the Israeli population, from possible discrimination. The Israeli government, sensitive to these issues due to the historical experience of the Jewish people, raised no objections. This was also due to the fact that the reference to religious freedom served to give a solid basis to a commitment which Israel holds particularly dear, namely fighting anti-Semitism.[32]

The commitment to uphold religious freedom made in Article 1 of the Fundamental Agreement goes beyond these important but contingent motives. From the Holy See's point of view, it appears as the first full realization in concordat law of the Vatican II Council's declaration, *Dignitatis Humanae*, which states that every "human person has a right to religious freedom" and requires this right to be "given such recognition . . . as will make it a civil right."[33] In this document, the right to religious freedom is conceived as a natural right. In other words, every person has the right to religious freedom simply because he or she is a human being. This principle is expressed in Article 1 with the formula "human right to freedom of religion and conscience,"[34] which is more consonant to the language of international law. In any case, this "absolute" nature of the right to religious freedom involves a legal obligation of general scope. The Catholic Church and the State of Israel committed themselves to upholding religious freedom not only of their own believers and citizens, but also those of any other entity. The rights and freedoms recognized by the Catholic Church must not become the reason for even indirect limitations on the rights and freedoms of other individuals and groups.

Examining the letter of the law, the commitments undertaken by the two parties in Article 1 of the Agreement are not identical, either in content or scope. With respect to content, Israel agrees to "uphold and observe" the right to religious freedom, while the Catholic Church is bound

31. *See* Lorenzo Cremonesi, *Le Tappe del Negoziato Diplomatico*, QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA, Apr. 1995, at 165.

32. *See* Fundamental Agreement, *supra* note 2, art. 2, at 155 (providing a commitment to combat anti-semitism).

33. VATICAN II COUNCIL, DIGNITATIS HUMANAE (Dec, 7 1965), *reprinted in* VATICAN COUNCIL II: THE CONCILAR AND POST CONCILAR DOCUMENTS 799, 800 (Austin Flannery ed. & Laurence Ryan trans., 1975).

34. Fundamental Agreement, *supra* note 2, art. 1, at 154.

only to "uphold" religious freedom.[35] The different nature of the two subjects probably explains the disparity of their obligations. The Catholic Church must promote the right to religious freedom, but it is not obliged to observe the same if this means, for example, "to accept that, within itself, other faiths are embraced by its believers even if they are different from its own and that different rites from its own are celebrated."[36] With regard to scope, the Agreement refers to the international conventions signed by Israel and the Holy See to determine the rights to religious freedom that the parties agree to honor. This reference confers a different scope to the obligation assumed by the two parties. In particular, Israel (but not the Holy See) signed the International Covenant on Civil and Political Rights and the International Agreement on Economic, Social and Cultural Rights (ICCPR) which contain important provisions on the subject of freedom of religion.[37]

Article 1 binds the parties to respect the human right to religious freedom.[38] This explicit qualification of religious freedom as a human right, the significance of which has already been seen in relation to the Vatican II Council's documents, fulfills various functions. First, this Article should be considered in the context of Israel's legal tradition that, in the absence of a written constitution, has broadly utilized the international conventions on human rights to make up for the absence of a law on religious freedom at the constitutional level.[39] The reference to human rights contained in Article 1, moreover, serves to stress the importance of the right to religious freedom and, finally, to place its interpretation in the light of what has been acquired during the last fifty years, in terms of doctrine and jurisprudence, on the subject of human rights.

These acquisitions tend to highlight a dual dimension—individual and collective—of the right to religious freedom. In the individual dimen-

---

35. *Id.*

36. Tullio Scovazzi, *L'Accordo Fondamentale tra la Santa Sede e Israele: Aspetti di Diritto Internazionale dei Trattati*, QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA, Apr. 1995, at 163.

37. See International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 18, para. 2, 999 U.N.T.S. 171, 178 [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, art. 13, 993 U.N.T.S. 3, 8; *see also* Scovazzi, *supra* note 36, at 161-62. On the other hand, Article 1 of the Fundamental Agreement contains a declaration to respect "other religions and their followers," which is binding only for the Holy See. Fundamental Agreement, *supra* note 2, art. 1, para. 2, at 154.

38. *See* Fundamental Agreement, *supra* note 2, art. 1, at 154.

39. *See* Rosen-Zvi, *supra* note 26, at 219-20; Shimon Shetreet, *Some Reflections on Freedom of Conscience and Religion in Israel*, 4 ISR. Y.B. ON HUM. RTS. 194, 196 (1974); *see also* Eyal Benvenisti, *The Influence of International Human Rights Law on the Israeli Legal System: Present and Future*, 28 ISR. L. REV. 136-53 (1994).

sion, the right to religious freedom is substantiated through a series of rights belonging to each human being. The common reference, as much by the Holy See as by Israel, to the Universal Declaration on Human Rights supplies an initial catalogue of these rights, including the individual right to change one's religion[40] which has not been reaffirmed explicitly in all subsequent international instruments. It is possible to develop this catalogue through reference to the other conventions to which Israel and the Holy See are parties.

The group dimension of the right to religious freedom does not find such an explicit reference in the provisions of international law. However, the nearly unanimous opinion of the doctrine[41] and, more timidly, the jurisprudence of the international bodies,[42] has stressed the need to recognize entitlement to the right to religious freedom not only as to individuals, but also as to communities. The observation that often "individuals are discriminated against because of their membership in some specific group"[43] created a broad consensus for the proposal to draft "a more general notion of *rights* inherent to the condition of some specific and well defined groups,"[44] among which the religious communities maintain an important position. From this perspective, it is easy to see the increasing intersections between the reflections of the most recent international doctrine and the principles of the freedom due to the religious communities as set out in the Vatican II Council documents: the catalogue of the freedoms that are the competence of the religious communities, as written in the declaration *Dignitatis humanae*, is substantially identical to the one that lawyers draw from the international provisions protecting religious freedom.[45]

A closer examination of the contents of Article 1 of the Fundamental Agreement, from the point of view of group rights to religious freedom, reveals that here, too, the obligations assumed by the parties are not

40. *See* Universal Declaration of Human Rights, Dec. 10, 1948, art. 18, G.A. Res. 217 A(III), U.N. GAOR, 3d Sess., U.N. Doc. A/810, at 71 (1948).

41. *See* Yoram Dinstein, *Freedom of Religion and the Protection of Religious Minorities*, 20 ISR. Y.B. ON HUM. RTS. 155, 178 (1990); Alessandro Pizzorusso, *Libertà Religiosa e Confessioni di Minoranza*, QUADERNI DI DIRITTO E POLITICA ECCLESIASTICA, Apr. 1997, at 49.

42. On the evolution in this direction of the jurisprudence of the European Commission on Human Rights, see Javier Martinez Torrín, *La Giurisprudenza degli Organi di Strasburgo sulla Libertà Religiosa*, *in* 1 RIVISTA INTERNAZIONALE DEI DIRITTI *DELL'UOMO* 338-39 (1993).

43. NATAN LERNER, GROUP RIGHTS AND DISCRIMINATION IN INTERNATIONAL LAW 169 (1991).

44. *Id.* at 17.

45. *See id.* at 80-84.

identical. For instance, Israel, which is party to the ICCPR, is bound to respect Article 27 thereunder which provides that "[i]n those States in which ethnic, religious, or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."[46] The Catholic population in Israel certainly qualifies as a religious minority.[47] As such, the Holy See could, if necessary, ask that this provision be respected. Its scope, according to prevailing doctrine, encompasses not only the "collective human rights of religious minorities . . . to found and operate the communal institutions required for the perpetuation of the minority's religion,"[48] but also the cultural dimension connected to the religious experience. Indeed, authoritative experts maintain that "even when we consider a strictly religious minority—namely, a group differing from the majority only in its religious belief, or Catholics in England we must not lose sight of the link between religion and culture."[49] The reference in Article 27 of the ICCPR "to the right 'to enjoy their own culture' may be interpreted to apply not only to ethnic minorities, but also to religious minorities."[50]

With respect to this picture defined by the reference to the "human right to freedom of religion and conscience,"[51] the character of many of the provisions contained in the Fundamental Agreement is essentially one of integration and specification. For instance, the commitment undertaken by Israel and the Holy See to "respect the 'Status quo' in the Christian Holy Places to which it applies and the respective rights of the Christian communities thereunder"[52] is a particular application of the right to observe and practice one's own religion, which is guaranteed by

46. ICCPR, *supra* note 37, art. 27, at 179.

47. *See* Dinstein, *supra* note 41, at 164-70 (discussing the characteristics of religious minorities).

48. *Id.* at 168.

49. *Id.* at 169.

50. *Id.* Moreover, this provision should be interpreted broadly, consistent with Article 1 of the Declaration on the Rights of Persons Belonging to Natural or Ethnic, Religious and Linguistic Minorities, which ensures: "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 1, para. 1, G.A. Res. 47/135, U.N. GAOR, 47th Sess., Agenda Item 97(b), at 4, U.N. Doc. A/RES/47/135 (1993); *see also* Lerner, *supra* note 30, at 111–24.

51. Fundamental Agreement, *supra* note 2, art. 1, para. 1, at 154.

52. *Id.* art. 4, para. 1, at 155.

Article 18 of the ICCPR.[53] Article 6, which reaffirms "the right of the Catholic Church to establish, maintain and direct schools and institutes of study at all levels,"[54] is a development and specification of Article 13 of the International Covenant on Economic, Social and Cultural Rights. These two provisions, together with Article 8[55] and Article 10 of the Fundamental Agreement, also may be considered specifications of Article 27 of the ICCPR.

Article 1 of the Fundamental Agreement therefore seems to have dual functions. On the one hand, it binds the parties to a series of obligations which may be defined summarily by the expression "human right to freedom of religion and conscience,"[56] and more analytically identified through the Universal Declaration of Human Rights and the other international conventions already mentioned. It, however, supplies the context in which the subsequent provisions of the Agreement are to be set forth and interpreted. Indeed, these provisions interact in several respects with the provisions contained in the international instruments on human rights. For example, Article 6 of the Fundamental Agreement declares the right of the Catholic Church in Israel to "establish, maintain and direct schools and institutes of study at all levels; this right being exercised in harmony with the rights of the State in the field of education."[57] This provision might be read, forcing its interpretation a little, in the sense that the right of the Catholic Church to establish schools remains subordinate to the existence of a state law that provides for this possibility. However, Article 13 of the International Covenant on Economic, Social and Cultural Rights declares "the liberty of parents . . . to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State . . . ."[58] This provision obligates the state to provide for the possibility of creating private schools—otherwise the right of the parents would be frustrated—and

53. ICCPR, *supra* note 37, art. 18, at 178.

54. Fundamental Agreement, *supra* note 2, art. 6, at 156.

55. Article 8 of the Fundamental Agreement affirms that the "right of the Catholic Church to freedom of expression in the carrying out of its functions is exercised also through the Church's own communications media." *Id.* art. 8, at 156.

56. *Id.* art. 1, at 154. The utility of the conventions stipulated between the Holy See and states, considered "alternative ways of action" compared to the "global and regional instruments" existing in this sector, to reinforce the protection of the right to religious freedom is stressed by Natan Lerner, *The Holy See and Israel: Protecting Religious Human Rights by Bilateral Agreements* (in press in Anuario de Derecho Eclesiastico del Estado).

57. Fundamental Agreement, *supra* note 2, art. 6, at 156.

58. International Covenant on Economic, Social and Cultural Rights, *supra* note 37, art. 13(3), at 8.

limits its power to the determination of the educational requirements to which these schools must conform.[59]

VI. ARTICLE 3 OF THE FUNDAMENTAL AGREEMENT

The recognition of "group rights" or "community rights" referred to in the previous paragraph raises several delicate issues. One is that not all groups are equal and, therefore, all groups are not entitled to the same rights. It is at this point that, in my opinion, the connection between Article 1 and Article 3 of the Fundamental Agreement resides. Until now, we have discussed only the sphere of Article 1, which establishes a common platform for the rights, not only of individuals, but also of religious communities. Article 3 specifies these rights in relation to a particular community, the Catholic Church.

The first commentators of the Fundamental Agreement did not devote much attention to Article 3, which was mainly read in light of Article 1.[60] The legal status of the Catholic Church in Israel, as defined in Article 3, would therefore find its foundation in the commitment to respect religious freedom assumed by the State of Israel in Article 1 of the Agreement. More precisely, it would be a consequence of the collective right to religious freedom due to the members of the Church itself. This interpretation, although confirmed in the conclusions reached by the part of canon law doctrine reflecting on the relations between religious freedom and *libertas Ecclesiae*,[61] does not appear to be supported by Article 3 of the Fundamental Agreement.

It is well known that the status of the Catholic Church in Israel was one of the thorniest points of the negotiations. The Israeli Government, following the United States model, tended to consider ecclesiastical organizations in the broader category of non-profit organizations. Moreover, they were willing to recognize the legal personality of only single church institutions, but not the Catholic Church as such. Instead, the delegates of the Holy See asked that the Catholic Church be granted an independent legal personality.[62] Important practical consequences were

59. *See* Yoram Dinstein, *Cultural Rights*, 9 ISR. Y.B. ON HUM. RTS. 58, 68-73 (1979).

60. *See* David Maria A. Jaeger, *In Margine all' "Accordo Fondamentale" tra la Santa Sede e lo Stato di Israele*, *in* LA PORTA D'ORIENTE 21 (1995); Francesco Lozupone, *Stato e Confessioni Religiose in Israele*, *in* MINORANZE, LAICITÀ, FATTORE RELIGIOSO 198 (R. Coppola & L. Troccoli eds., 1997).

61. *See* 19 LUIGI MISTÒ, "LIBERTAS RELIGIOSA" AND "LIBERTAS ECCLESIAE": IL FONDAMENTO DELLA RELAZIONE CHIESA-COMUNITÀ POLITICA NEL QUADRO DEL DIBATTITO POSTCONCILIARE IN ITALIA 179-87 (1982).

62. *See* Cremonesi, *supra* note 31, at 177-81.

at stake, though it was above all a clash between two antithetical legal concepts that are the fruit of two distinct cultural traditions.

Article 3 of the Fundamental Agreement is the result of this clash, and it can be considered from two angles: structural and linguistic. From the structural angle, an analogy emerges with the European conventions[63] since the Vatican II Council, examined above: the identification of two distinct orders—the "respective rights and powers"[64] that depend on the Holy See and Israel—the independence and autonomy of each of the parties in their respective orders—where it is stated that both parties "are free in the exercise of their respective rights and powers"[65]—and the commitment to "co-operation for the good of the people."[66] The second paragraph of Article 3 further specifies the principle of distinction between the orders, delimiting them by indicating the functions belonging to one sphere or the other. Specifically, the "religious, moral, educational and charitable functions" are delegated to the Church's authority, while "functions such as promoting and protecting the welfare and the safety of the people"[67] are delegated to the State. The second paragraph of Article 3 reaffirms the autonomy of the Church in regulating its own internal organization and in carrying out the activities connected to the functions that are recognized as its own. The Church retains the right "to have its own institutions, and to train, appoint and deploy its own personnel in the said institutions or for the said functions to these ends."[68] From this angle, the Fundamental Agreement is far more comparable to the European conventions than to those between the Holy See and Morocco or Tunisia.

If the structure of Article 3 closely follows that of the corresponding articles of the European conventions, from the language angle it is certainly different. The terms "autonomous" and "independent" have been replaced by the word "free," and whereas the European Conventions

63. An analogy with Article 1 of the Italian Agreement (which on this point is substantially identical, as we have seen, to the other European conventions) has been picked up by Francesco Margiotta Broglio, *L'Accordo "Fondamentale" tra la Santa Sede e lo Stato d'Israele (30 Dicembre 1993)*, in NUOVA ANTOLOGIA, Apr.-June 1994, at 157.

64. Fundamental Agreement, *supra* note 2, art. 3, para. 1, at 155.

65. *Id.*

66. *Id.* art. 3, para. 1, at 155. An application of this principle may be found in Article 11 of the Fundamental Agreement, where the Holy See declares that "owing to its own character, it is solemnly committed to remaining a stranger to all merely temporal conflicts." *Id.* art. 11, para. 2, at 157. The extraneousness of the Holy See to temporal questions is affirmed on account of the nature itself of the Holy See, which presupposes the existence of an order to which the Holy See is by its very nature extraneous.

67. *Id.* art 3, para. 2, at 155.

68. *Id.*

employ the term "own order" in referring to state and church, Article 3 incorporates the phrase "respective rights and powers."[69] This difference in language may be explained in two ways. First, the spiritual-secular distinction is less important in the Jewish tradition, and it is therefore difficult to theorize about the distinction of an order of the Church and an order of the State. Second, the common law tradition, in particular the North American tradition, has exercised and continues to exercise influence on the Israeli legal culture, which has inherited the Anglo-Saxon lawyers' wariness of wording based on general and abstract concepts, namely, independence and autonomy, and the preference for concrete and pragmatic solutions founded on the recognition of rights and powers to specific subjects.

In any case, to understand correctly the legal position of the Catholic Church within the Israeli legal system, it appears to me that the last paragraph of Article 3 is decisive. Article 3 states that "[c]oncerning Catholic legal personality at canon law the Holy See and the State of Israel will negotiate on giving it full effect in Israeli law."[70] Although the expression "Catholic legal personality at canon law" is not totally self-evident, the meaning of the provision is sufficiently clear. The commitment by Israel and the Holy See to carry out negotiations does not simply regard the attribution of legal personality, meaning "any" form of legal personality, to the Catholic Church and its organizations, but it also regards the attribution of full effect in Israeli law to legal personality as it is recognized by canon law. The code of canon law clearly states that: (1) the Church, as such, enjoys legal personality, and that (2) such personality is enjoyed "*ex ipsa ordinatione divina.*" First, under this construction the legal personality of the Catholic Church can neither be confused with nor exhausted in the legal personalities of other organizations that are a part of the Church. Second, the legal personality of the Church derives from an original source, and does not depend in any way upon the State. The characteristics of originality and independence are constitutive parts of the notion of legal personality articulated under canon law. Consequently, these same characteristics of legal personality must be mirrored in the form of legal personality that will be granted to the Church under Israeli law.[71] Therefore, Article 3 of the Fundamental Agreement is an

69. *Id.* art. 3, para. 1, at 155.

70. *Id.* art. 3, para. 3, at 155.

71. 1983 CODE c.113, § 1 (providing that the Church's legal personality is enjoyed "*ex ipsa ordinatione divina*"). Other canons define the prerogatives of the Church by emphasizing their original character. *See id.* c.129, § 1 ("potestas regiminis . . . ex divina institutione est in Ecclesia"); *id.* c.747, § 1 ("Ecclesiae . . . officium est et ius nativum . . . a

autonomous base, independent of Article 1, and competing with it for the legal status of the Church under Israeli law.

VII. RELIGIOUS FREEDOM AND FREEDOM OF THE CHURCH IN THE FUNDAMENTAL AGREEMENT

The remarks made in the two previous paragraphs allow us to reach a conclusion which, starting with the Fundamental Agreement, regards more general relations between the state and religious communities. The commitment to respect the collective right to religious freedom is a legal platform valid for all religious communities. Consequently, religious communities can enjoy a series of rights, ranging from organizing themselves autonomously to teaching their doctrine freely, which the state is obliged to guarantee.

From this common platform it is possible to further specify the rights due to the religious communities by means of bilateral agreements between the state and these communities. This is what has happened in many European countries, as we have seen. These further specifications integrate the general law, which derives from the right to religious freedom by adapting it to the peculiar characteristics of each religious community.

With respect to the Fundamental Agreement, Article 1 supplies the common platform. Thereafter, Article 3 and, in relation to more specific sectors, Articles 6, 8, 9, and 10 adapt and integrate Article 1 to mold it to the requirements of the Catholic Church, just as a different agreement might do for the requirements of another religious confession.

Generally, this system suitably protects both individual and group religious freedom, as long as two conditions are respected. First, the specification of rights to religious freedom through agreements does not contradict the common platform guaranteed to individuals and groups by the human right to religious freedom. Second, there should be correspondence between the agreements of the different religious communities and between these agreements as a whole and the unilateral state discipline of the religious communities that have not stipulated agreements, to avoid inequality which could adversely impact religious freedom. The "equal freedom"[72] of all religious communities, with or without agreements with the state, is the insuperable limit of any agreement system.

---

qualibet humana potestate independens, omnibus gentibus Evangelium praedicandi").

72. In this perspective, it is useful to remember the first comma of Article VIII of the Italian Constitution, even if its potential does not appear to be fully exploited: "[a]ll religious denominations are equally free before the law." COSTITUZIONE [COST.] art. VIII.

VIII. THE FUNDAMENTAL AGREEMENT AS A MODEL FOR CONVENTIONS WITH NON-CHRISTIAN COUNTRIES?

The Fundamental Agreement undoubtedly marks an important step forward as compared to the other conventions concluded with non-Christian countries. In this context, three elements are particularly worthy of consideration. First, the right to religious freedom is a fundamental meeting point and an important point of departure for cooperation between the Catholic Church and states. The Vatican II Council delineates "the right to religious freedom in analogous terms to those of modern legal doctrine, for which it takes shape as a subjective, individual and collective public right."[73] The Fundamental Agreement, however, with its reference to the Universal Declaration on Human Rights, allows us to broaden this intersection from the structure of the right to religious freedom to its contents, identifying a catalogue of rights that both the Church and the state undertake to support. The Catholic Church's interest in obtaining, especially in countries where it is a minority religion, precise guarantees of religious autonomy and freedom, could coincide with the interests of states. Even where states are not spontaneously inclined to protect rights to religious freedom, they may have a measurable interest in demonstrating to the international community their respect for one of the fundamental human rights. As such, the reciprocal commitment to develop the rights to religious freedom could be the starting point of a policy of agreements extended to states, which have so far remained extraneous.[74]

Second, the Fundamental Agreement demonstrates that it is possible to translate the principles of the independence and autonomy of the Church and of the distinct orders of the state and of the Church into legal categories unrelated to the Western legal tradition—this was unsuccessful in the conventions with Morocco and Tunisia. It is an inevitable step if we do not wish to limit the field of application of the conventions between the Church and states to countries with a Christian tradition. The Fundamental Agreement hinges on the freedom of the Church and of the state in the exercise of their respective rights and powers. It is a formulae that could be used in very different legal systems, provided we succeed in clarifying the margin of ambiguity which still may be inherent in it.

---

73. GIUSEPPE DALLA TORRE, LA CITTA SUL MONTE 79 (1996).

74. Naturally, this is not possible with everybody, nor with everybody in the same way. Rights to religious freedom could turn out to be infertile ground, for example, for starting concordat relations with Islamic countries.

Finally, the importance of the human rights provision within the Fundamental Agreement must not be underestimated. This provision may be most useful in countries with no written constitution, such as in Israel, or where the constitution does not adequately protect religious freedom. In this case, the guarantees provided by international law on human rights are an alternative route which may compensate for the absence of similarly strong human rights guarantees in the internal law of a state.

It is too early to know for certain whether the Fundamental Agreement is a model that can be exported anywhere. For now, it is safe to say that the Fundamental Agreement provides some very interesting starting points for the development of a system of relationships based on agreements with states that do not belong to the cultural area of Christian tradition.